

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM A. TACCINO

v.

NATIONAL RURAL LETTER
CARRIERS ASSOCIATION

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Civil No. JFM-03-2373

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MEMORANDUM

William Taccino has brought this action for an alleged breach of the duty of fair representation against the National Rural Letter Carriers Association. Defendant has filed a motion for summary judgment to which plaintiff has responded. The motion will be granted.¹

A.

Plaintiff was discharged by his former employer, the United States Postal Service, for being absent without leave.² On December 13, 2001, plaintiff was sent a notice of removal setting forth the reasons for his discharge:

1. Failure to Meet the Requirements of Your Position in the Area of Attendance due to being Absent Without Leave/Permission (AWOL).

On August 14, 2001 you notified this office of your inability to report for duty. Thereafter, you neither reported for duty, nor did you contact this office concerning your absence. On October 30, 2001 you were sent an Absence Inquiry Letter, which instructed you to return to duty on your next regularly scheduled day or to provide documentation to substantiate the entire period of your absence. You responded to this inquiry on November 5, 2001, with a document hand written by you. On November 15, 2001, you were sent a second Absence

¹Plaintiff is appearing *pro se*. However, an attorney has assisted him in preparing his opposition memorandum.

²Plaintiff had been charged with the same type of misconduct two years earlier and his employment was terminated. However, after he filed suit against the union in this court, the union pursued a grievance on plaintiff's behalf and persuaded the Postal Service to reinstate him.

Inquiry Letter advising that your hand written document was not acceptable documentation to substantiate your absence. This letter also advised that you would be granted another opportunity at a Pre-Disciplinary Interview to provide documentation to substantiate the entire period of your absence. During the Pre-Disciplinary Interview you requested an additional week to retrieve documentation. On November 26, 2001 you were again afforded an opportunity to present acceptable documentation. You failed to present management with acceptable documentation and have therefore, been charged with being Absent Without Leave/Permission (AWOL) from August 14, 2001 to the present.

Employee and Labor Relations Manual, Section 511.43, states: "Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required."

Plaintiff claimed that he was unable to return to work because he needed foot surgery. He further claimed that he could not afford to pay for the foot surgery without medical insurance and that he had no insurance because it had not been reinstated after he returned from work from his previous absence. *See* footnote 2, *supra*. The Postal Service took the position (a position ultimately agreed to by the Union) that the insurance could not be reinstated until plaintiff paid the premiums he had not paid during his absence. Plaintiff asserts that the Postal Service's refusal to reinstate his medical insurance without payment of the past premium dues was wrongful.

On the merits of this dispute about the reinstatement of health benefits, it appears that the Postal Service was correct. However, the dispute is immaterial for present purposes. Plaintiff's lack of health insurance may have provided an explanation for why he did not receive the foot surgery he allegedly needed. However, plaintiff never offered prior to his discharge (and has never offered since) a reasonable explanation as to why his doctor could not provide a note specifying his diagnosis and the reasons that plaintiff would not be able to work. Plaintiff did not have to have health insurance in order to obtain such documentation. Plaintiff was required to provide the documentation, *see USPS Employee and Labor Relations Manual*, Sections

513.362 and 513.364, and, despite the Postal Service's request, he never did so.

Upon his removal, plaintiff filed a grievance. The Union pursued the grievance through three steps of the grievance process. However, after the grievance had been denied at the third step, a grievance specialist recommended that plaintiff's case not be arbitrated. Thereafter, the Union's Director of Labor Relations, after a thorough review of the grievance file and after discussing the matter with the Union's general counsel, concluded that the Union would have no reasonable likelihood of success in arbitration. Plaintiff was given one further opportunity to provide any additional information, and after no such information was received, the Union's national president withdrew plaintiff's grievance from arbitration.³

B.

A breach of the duty of fair representation occurs only when a union's conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 286 U.S. 171, 190 (1967); *Hypes v. Cyrprus Kanawa Corp.*, 40 F.3d 1244 (4th Cir. 1994) (unpublished). A union's actions are arbitrary only if they are "so far outside a 'wide range of reasonableness' as to be irrational." *Airline Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65, 67 (1991). *Oogley v. Household Mfg.*, 961 F.2d 1293, 1302 (7th Cir. 1992). Under the extremely differential standard in *O'Neill*, "court should not substitute their judgment for that of the union, even if, with the benefit of hindsight, it appears that the union could have made a better call."

Here, there is absolutely no evidence to suggest that the Union's decision not to take

³While the grievance process was going forward, plaintiff wrote a letter to Vice President Cheney in which he stated, *inter alia*, that the "axis of evil, the terrorists in [his] life" were Maryland State Trooper Gary Resch [with whom he had a previous altercation] and Postmaster Ed Peterson." He further wrote, "Make no mistake about it, these evil-doers must be brought to justice one way or another."

plaintiff's grievance to arbitration was "arbitrary, discriminatory, or in bad faith." Simply stated, plaintiff simply chose not to show up for work, and he declined to present the documentation necessary to excuse his absence. Regardless of whether or not plaintiff had lost his medical insurance, the Postal Service was fully entitled to receive a note from a medical professional supporting plaintiff's position that he could not return to work for medical reasons. When plaintiff failed to provide any such documentation, his employment was properly terminated.⁴

A separate order granting defendant's motion and entering judgment on its behalf is entered herewith.

Date: July 19, 2005

/s/ _____
J. Frederick Motz
United States District Judge

⁴Plaintiff has cited no legal authority to support the proposition that the mere fact that he had previously sued the Union to require it to pursue an earlier grievance he had filed raises an inference that it failed to process plaintiff's new grievance in bad faith. Nor has he presented any evidence giving rise to such an inference.

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ORDER

For the reasons stated in the accompanying memorandum, it is, this 19th day of July
2005

ORDERED

1. Defendant's motion for summary judgment is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

/s/

J. Frederick Motz
United States District Judge